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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

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16
17 GOOGLE LLC,

18 Plaintiff,

19 vs.

20 SONOS, INC.,

21 Defendant.

Case No. 3:20-cv-06754-WHA

Related to Case No. 3:21-cv-07559-WHA

**GOOGLE LLC'S RESPONSE TO THE
COURT'S REQUEST FOR
INFORMATION (DKT. 556)**

The Hon. William H. Alsup

1 The Court already construed “playback queue” as “a list of multimedia content selected for
 2 playback.” Dkt. 316 at 5. Thus, a “**remote** playback queue” is a “playback queue” geographically
 3 distant from the claimed computing and playback devices—*e.g.*, a playback queue in the cloud.¹
 4 The parties dispute whether a remote playback queue that is copied to a device for purposes of
 5 facilitating local playback is no longer a remote playback queue. Sonos’s position appears to be
 6 that a remote playback queue ceases to be one if it is copied and processed locally for playback.
 7 Dkt. 488-4 (Schmidt Reb. Rpt.), ¶108 (“there can only be **one** playback queue, which is either
 8 remote or local”) (emphasis in original); Dkt. 509-2 (Sonos Opp. to MSJ) at 7 (arguing the YTR
 9 party queue is not a “remote playback queue” because playback device “uses its own locally-stored
 10 copy of the [party] queue for playback”). Sonos’s apparent position: (1) contradicts the plain claim
 11 language, (2) is inconsistent with the Court’s prior showdown order finding that a “remote playback
 12 queue” exists and “runs the show” even where it is copied locally as a “means to process” the remote
 13 queue for playback, and (3) is contrary to black-letter law that provides that the asserted
 14 “comprising” claims may include additional, unrecited elements. Dkt. 316 at 10.

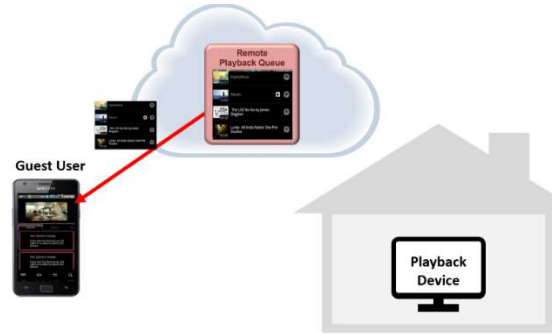
15 A. Google’s Construction Is Supported By The Claim Language

16 “Claim construction begins with the words of the claim.” *Prima Tek II, L.L.C. v. Polypap*,
 17 *S.A.R.L.*, 318 F.3d 1143, 1148 (Fed. Cir. 2003). Here, claim 1 begins by reciting a computing device
 18 configured for playback of a “remote playback queue **provided by** a cloud-based computing system
 19 associated with a cloud-based media service.” Limitation 1.4. The term “provided by” means to
 20 “give” something.² Thus, by reciting that the “remote playback queue” is “provided by a cloud-
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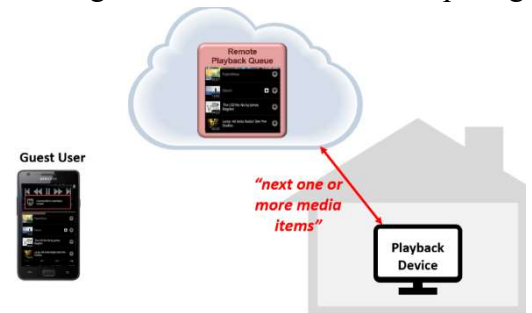
25 ¹ Sonos agrees at least on this aspect of the construction. *E.g.*, Dkt. 389 (Sonos Opp. to Google
 26 Motion for Leave) at 2 (“as the claims of the ‘033 patent otherwise make clear, the remote playback
 27 is located *in the cloud* and is ‘remote’ from the computing device itself.”); Dkt. 467-4 (Schmidt ‘033
 28 Rpt.), ¶236 (“the word ‘remote’ before the phrase ‘playback queue’ indicates that the ‘playback
 queue’ is not local to whatever device is to playback media identified by the contents of the
 ‘playback queue,’ such as a ‘playback queue’ that is accessible to a device over a network.”).

² See <https://www.oxfordlearnersdictionaries.com/us/definition/english/provide>.

1 based computing system,” the claim scope
 2 encompasses the cloud-based computing system
 3 giving the computing device a copy of a remote
 4 playback queue that is located in the cloud). This
 5 is shown on the right.



6 Claim 1 next recites that the computing
 7 device transmits an instruction for the playback device to “take over responsibility for playback of
 8 the remote playback queue.” Limitation 1.7. In other words, the claim requires that the playback
 9 device continue to playback the same list of media provided by the cloud in Limitation 1.4. Notably,
 10 the language of Claim 1 (as well as dependent claim 2) expressly encompasses the playback device
 11 receiving a copy of the entire remote playback queue by reciting that the cloud-based computing
 12 system provides “data identifying the next one *or more*
 13 media items” to the given playback device. In other
 14 words, the cloud can provide data identifying the entire
 15 remote playback queue playlist (“one or more”) to the
 16 playback device, thereby creating a local copy of the
 17 remote playback queue. This is shown on the right.



18 **B. The Remote Queue Runs the Show Even If Playback Devices Use Local Copies**

19 During the showdown the Court found that Google’s accused YouTube application included
 20 a cloud queue that “runs the show.” Dkt. 316 at 9-10. The Court concluded that the cloud queue in
 21 the accused applications “runs the show” because the “cloud queue delivers information to the
 22 playback device on a one-way street”—*i.e.*, media set to play back on a playback device is “dictated
 23 by the cloud queue” and when a change is made to the playlist, it must first be made in the cloud
 24 before it can be provided to playback devices. *Id.* Where a playback device receives a playlist from
 25 a remote queue, this “locally-stored information” is merely a “mirror” of the remote queue and
 26 “provide[s] the means to process the lists for playback.” *Id.* In other words, just because some or
 27 all of the contents of the remote playback queue is copied locally, that does not mean that the remote
 28 playback queue is no longer running the show. Yet that is precisely how Sonos reads the claim to

1 attempt to draw a distinction with the YouTube Remote (YTR) prior art. YTR, however,
 2 undisputedly discloses a remote “party mode” queue synced locally to playback devices, yet still
 3 runs the show because any edits to the party queue must be made in the cloud and synced to playback
 4 devices using a one-way street. Sonos’s arguments should be dismissed—compelling a finding of
 5 invalidity.³

6 C. Sonos’s Understanding of the Claim Term Is Contrary To Black-Letter Law

7 The asserted claims are “comprising” claims. It is black-letter law that “comprising” claims
 8 may include additional, unrecited elements. *E.g., Innovad Inc. v. Microsoft Corp.*, 260 F.3d 1326,
 9 1333 (Fed. Cir. 2001). Thus, even if a local copy of the remote playback queue was unrecited (as
 10 explained above, it is expressly contemplated), it is allowed for under the “comprising” language.

11 Indeed, Sonos’s expert has stated “just because a sender device might *maintain* a local copy
 12 of a queue does not necessarily mean that there is not also a remote playback queue *provided* by a
 13 cloud-based computing system.” Dkt. 505-1 (Schmidt Op. Rpt.),

14 ¶ 480 (emphasis in original). Moreover, Sonos submitted a
 15 technology tutorial in this case (Dkt. 115) representing that the



16 ‘033 patent discloses that a [1]
 17 smartphone stores an “app queue



18 that contains media item identifiers corresponding to songs that are
 19 scheduled for playback,” and [2] that “additionally there can be a
 20 remote playback queue in the cloud containing one or more media

21 item identifiers corresponding to the one or more media item identifiers in the app queue.” Sonos
 22 Tutorial, Chapter 6 at 2:08-3:10. Sonos also explained the playback device may store a local copy
 23 of the playback queue that it uses to retrieve the media content. *Id.* at 4:04-4:21. The images on the
 24 right are from the tutorial with green boxes added.

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 27 ³ For example, if a playback device is playing content from a local copy of a remote playback
 28 queue originally provided by the cloud, and the remote playback queue overrides that local copy
 whenever an edit is made to the remote queue, that remote playback queue is still determining the
 behavior of the playback device and falls within the meaning of the claims.

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2 DATED: March 31, 2023

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on March 31, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

/s/ Charles K. Verhoeven
Charles K. Verhoeven